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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 874

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI to the United States Circuit Court of Appeals for the Ninth Judicial Circuit and BRIEF IN SUPPORT THEREOF.

GUY C. CALDEN,
Counsel for Petitioner.

CLARENCE E. TODD,
Of Counsel.

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PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals for the Ninth Judicial Circuit.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioner, Alameda County Building and Construction Trades Council, respectfully prays that a writ of certiorari issue to review a decision of the Circuit

Court of Appeals of the United States for the Ninth Judicial Circuit in the case of Lumber Products Association, Inc. (a corporation), et al., Appellants v. United States of America, Appellee, No. 10,011, dated August 23, 1944. (R. 1697.)

This case in the Circuit Court of Appeals was an appeal from a judgment on a verdict of guilty against certain defendants in the case of United States of America v. Lumber Products Association, Inc., et al., in the District Court of the United States for the Northern District of California, Southern Division, No. 26,977-S. A number of the defendants in the original suit against whom judgment of conviction was entered appealed to the Circuit Court of Appeals in the case above mentioned and on affirmance of the judgment against a number of the original defendants, these appellants, including the petitioner herein, seasonably petitioned for a rehearing, which petition was by said Circuit Court of Appeals for the Ninth Circuit denied.

This petition for writ of certiorari by the within petitioner, Alameda County Building and Construction Trades Council, is to some extent based on the same grounds urged by other petitioners herein and this petitioner relies upon each of the grounds, arguments and authorities presented by other petitioners herein.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

At the March Term, 1940, an indictment (R. 4-37) was filed in the United States Circuit Court for the Northern District of California, Southern Division, in the case above named and numbered, against the Lumber Products Association, Inc., and a group of employers in the cabinet shop industry in the San Francisco Bay area, also against a large number of labor unions and councils, including this petitioner, Alameda County Building and Construction Trades Council, the indictment charging violation of the Sherman Act, the first count being for restraint of trade, the second count, which was dismissed prior to trial, being for conspiracy to monopolize trade and commerce among the several states. The prosecution grew out of a labor dispute running over a period of years between the employers who were indicted and various unions and councils of the United Brotherhood of Carpenters and Joiners of America, including the United Brotherhood itself. The conspiracy charged consisted of certain language found in the contracts entered into between the employers and the various carpenters' organizations, all the details of which are fully set out in the petitions filed herein by the various carpenters' groups. (R. 28.)

This petitioner, Alameda County Building and Construction Trades Council, was not a party directly or indirectly to any of the agreements alleged to constitute a conspiracy or conspiracies.

The various contracts were put in evidence and showed no signature either as a party or by way of

approval or otherwise of this petitioner to any of the agreements. This petitioner was named in the indictment as a defendant and in general terms is alleged to have been one of the conspirators. In Section 17 (R. 19, 20) of the indictment it is alleged of this petitioner that:

> "It is advisor to, supervisor of and governing body for Unions composed of laborers engaged in building and construction trades in the County of Alameda, California."

Not a syllable of evidence was offered to prove that this petitioner was such advisor, supervisor or governing body as alleged, nor was any evidence offered as to the composition, constitution, make-up or set-up of this Council other than a stipulation that it was "a voluntary unincorporated association". (R. 262-264.)

The only specific reference in the opinion of the Circuit Court of Appeals to the evidence concerning this petitioner consists of a single short paragraph as follows (R. 1688):

> "The Alameda County Building and Construction Trades Council attacks the sufficiency of the evidence as to it in the same manner. We find ample evidence of the Council aiding in the enforcement of an agreement to exclude certain types of lumber and determining whether certain dealers should be placed on the unfair list for violating the agreements from which the jury could find participation in the conspiracy. The trial court did not err in refusing an instructed verdict for this appellant."

The evidence referred to in the above quoted paragraph consisted of statements made by certain individuals affiliated with this petitioner, Building Trades Council, expressing sympathy and in some instances cooperation with the boycott conducted by the carpenters' organizations. (R. 204, 205, 331-333, 338-342, 346-347.) But as stated above, there was no evidence showing any authority on the part of these individuals to make such statements or do such acts—in fact a complete lack of evidence of any authority on the part of anybody to speak for or represent this appellant Council in any capacity whatsoever.

STATEMENT OF JURISDICTION.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code. (28 U. S. C., Sec. 347(a).)

The judgment of the Circuit Court of Appeals was entered August 23, 1944. (R. 1697.) Petition for rehearing was presented within the time allowed therefor by rule of Court and thereafter duly denied on October 14, 1944. (R. 1698.) The mandate has been stayed until November 17, 1944, and thereafter until disposition of the matter by this Court. (R. 1699.)

THE QUESTIONS PRESENTED.

1. May an unincorporated association be held criminally liable under the Sherman Act for conspiracy, it not having been a party to the contract alleged to constitute the conspiracy?

2. May an unincorporated association be held criminally liable under the Sherman Act on account of things done by alleged officers or agents where there is no evidence as to the existence of such officers or agents or of their powers?

3. May an unincorporated association be held criminally liable under the Sherman Act for alleged acts of its officers and agents with no showing of either previous authorization or subsequent ratification of such acts?

4. Is an agreement between labor unions and employers to refuse to work on material produced under a lower wage scale than that enjoyed by the unions illegal under the Sherman Act?

5. Is such boycott if carried on peacefully and honestly protected by the provision of the Clayton Act?

6. Is such boycott if carried on peacefully and honestly protected by the provisions of the Norris-La Guardia Act?

7. Is such boycott protected by the terms of the Clayton and Norris-La Guardia Acts only so long as it does not restrain commerce between the several states?

8. Is such profection by the Clayton and Norris-La Guardia Acts confined to cases not involving interstate commerce?

9. Is such a boycott peacefully and honestly carried on protected by the First Amendment to the Federal Constitution?

REASONS FOR ALLOWANCE OF THE WRIT.

1. The above mentioned decision by the Circuit Court of Appeals for the Ninth Circuit, holding a peaceful boycott unlawful under the Sherman Act is in direct conflict with a decision of the Circuit Court of Appeals for the Second Circuit handed down October 12, 1944 in *Allen Bradley Co. v. Local Union No. 3 I. B. E. W.* In view of this conflict, this Court should settle the law on this important question.

2. The writ should be granted in order that this Court may have the opportunity to reaffirm the rule laid down in the *Coronado* cases (259 U. S. 344 and 268 U. S. 295) to the effect that an unincorporated labor organization may be held liable only for acts of its officers or agents previously authorized or subsequently ratified.

3. The decision in the case at bar is at variance with the rule in the recent decisions of this Court in *Apex Hosiery Co. v. Leader*, 310 U. S. 469, *U. S. v. Hutcheson*, 312 U. S. 219, *U. S. v. International Hod Carriers*, 313 U. S. 539, and *U. S. v. American Federa-*

tion of Musicians, 318 U. S. 741, all of which decisions held such boycotts to be immunized by the statutes above mentioned.

4. This Court has held that labor union activity against business concerns deemed by the union to be unfair is protected against attempted prohibition by state statute or state policy by the terms of the First Amendment to the Federal Constitution: *Senn v. Tile Layers,* 301 U. S. 468; *Thornhill v. Alabama,* 310 U. S. 88; *Carlson v. California,* 310 U. S. 296; *Milk Wagon Drivers v. Meadowmoor,* 312 U. S. 287; *Swing v. A. F. of L.,* 312 U. S. 321; *Bakery and Pastry Drivers v. Wohl,* 315 U. S. 769, and under the Sherman Act, in the concurring opinion of Chief Justice Stone in *U. S. v. Hutcheson,* 312 U. S. 219. This Court should decide whether the Bill of Rights of our Federal Constitution is not also paramount over acts of Congress such as the Sherman Act.

5. This Court, having held that these constitutional rights may be peacefully and honestly exercised in the presence of attempted prohibition by the state, should now hold that attempted congressional prohibition must be limited to acts not thus protected by the Bill of Rights.

PRAYER.

Wherefore, petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals of the United States for the Ninth Judicial Circuit, commanding that Court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and of all proceedings in the case entitled Lumber Products Association, Inc., Appellant v. United States of America, Appellee, and being No. 10,011 of the records of said Court, in the end that said cause may be reviewed and determined by this Honorable Court as provided by the statutes of the United States, and for such other and further relief as may be proper.

Dated, San Francisco, California,
November 8, 1944.

GUY C. CALDEN,
Counsel for Petitioner.

CLARENCE E. TODD,
Of Counsel.

CERTIFICATE.

We hereby certify that in our judgment the foregoing petition is well founded and that it is not interposed for delay.

Dated, San Francisco, California,
November 8, 1944.

GUY C. CALDEN,
Counsel for Petitioner.

CLARENCE E. TODD,
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No.

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL,
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UNITED STATES OF AMERICA,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF JURISDICTION.

As pointed out in the foregoing petition the statutory provision which sustains the jurisdiction of this Court in the instant matter is Section 240(a) of the Judicial Code. (28 U. S. C., Section 347(a).)

The judgment of conviction in the trial Court was entered December 20, 1941 (R. 1366, 1373, 1375, 1390), under an indictment charging violation of Section 1

of the Sherman Anti-Trust Act, 15 U. S. C., Section 1. (R. 4.)

The opinion of the Circuit Court of Appeals in this case was dated and filed on August 23, 1944, but is not at this date reported in the Federal Reporter, second series. The opinion appears in full at pages 1674 to 1696 of the record.

Petition for rehearing was filed September 22, 1944, within the time allowed therefor by rule of Court and was denied on October 14, 1944. (R. 1698.)

STATEMENT OF FACTS.

The facts in this case, particularly as regards this petitioner, are found in the "Summary and Short Statement of the Matter Involved", which is contained in the foregoing petition. The facts may be further summarized as follows: the indictment (R. 4 to 37) charged certain Unions and Councils, officers and members of the Brotherhood of Carpenters and their employers, certain business concerns in the cabinet shop industry in the San Francisco Bay area and individual defendants with a conspiracy to violate the Sherman Act by inserting in the collective bargaining agreement the following language:

> "* * * no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by saw-mills, mills or cabinet shops or their distributors that do not conform to the rates of wage and

working conditions of this agreement." (Except certain named items.) (R. 28.)

This petitioner, Alameda County Building and Construction Trades Council, is not an organization of carpenters, nor of their employers. This petitioner was not a party to any agreement containing the said language or to any agreement whatever referred to in the indictment or in the evidence. The sole contention of the prosecution as to the guilt of this petitioner was that certain acts and things were done by certain alleged agents of petitioner. (See Opinion of the Circuit Court of Appeals, R. 1688, and Brief for Appellee in the Circuit Court of Appeals, pages 111 to 115.) There was no attempt made by the Government to offer evidence of the constitution and by-laws, rules or regulations of this petitioner, of the existence of officers or agents or of their authority.

The crime of which this petitioner and other defendants were convicted apparently consisted first of the execution of this agreement (to which this petitioner was not a party), and of a boycott with picket lines directed at the material indicated by the portion of the agreement above quoted to be "unfair". And it is the contention of this petitioner that such of the acts charged as were actually proven are expressly immunized by the Clayton Act (29 U. S. C. 52) and the Norris-La Guardia Act (29 U. S. C. 101-115) and that these acts constituted the exercise of constitutional rights protected by the First Amendment to the Federal Constitution.

SPECIFICATION OF ERRORS RELIED UPON.

1. The Circuit Court of Appeals erred in affirming the judgment of conviction against this petitioner in the absence of any evidence or contention on the part of the Government that this petitioner was a party to any of the allegedly unlawful agreements, and in the absence of any showing whatever of authority of any agents of this petitioner to do or say the things actually proven.

2. The Circuit Court of Appeals erred in holding that the agreement above referred to constituted a conspiracy under the terms of the Sherman Act.

3. The Circuit Court of Appeals erred in holding that the boycott and picketing directed at material deemed unfair by the unions because it was produced under lower wage scales, was a violation of the Sherman Act.

4. The Circuit Court of Appeals erred in denying the immunity of such boycott and picketing under the terms of the Clayton Act and the Norris-La Guardia Act.

5. The Circuit Court of Appeals erred tragically in holding, in effect, that the protective provisions of the Clayton Act and the Norris-La Guardia Act were ineffective and void in the presence of any restraint of interstate commerce.

6. The Circuit Court of Appeals erred in holding, in effect, that the protective provisions of the Clayton Act and of the Norris-La Guardia Act were eliminated

and circumscribed by the Sherman Act, as if the Sherman Act were a later enactment which excluded all cases involving restraint of trade from the protection of the Clayton Act and of the Norris-La Guardia Act.

7. The Circuit Court of Appeals erred in ignoring the provisions of the First Amendment to the Federal Constitution and the many decisions of this Court allowing the protection of those provisions to boycott and picketing by labor unions under circumstances comparable to those at bar.

ARGUMENT.

A. THE WRIT OF CERTIORARI SHOULD ISSUE IN ORDER THAT THIS COURT MAY RECONCILE OR ADJUDICATE BETWEEN THE DECISION OF THE NINTH CIRCUIT COURT IN THIS CASE AND THE DECISION BY THE SECOND CIRCUIT COURT IN ALLEN BRADLEY v. ELECTRICIANS.

A very general examination of the facts in the case at bar, together with those in the decision in the Second Circuit on October 12, 1944, discloses that the two cases are essentially on all fours. (The *Allen Bradley* decision is not yet published in the Federal Reporter, second series, but the decision is set out in full in the advance sheets of Volume 15 of the Labor Relations Reporter, from page 214 to page 219, both inclusive.) Each involved a boycott of material deemed unfair because produced under different working conditions. (See the first paragraph of the *Allen Bradley* decision.) In the *Allen Bradley* case the Court held, and

we think correctly, that this boycott is immunized by the provisions of the Clayton Act and also by the Norris-La Guardia Act. In fact these acts were passed with the provisions of the Sherman Act clearly in the mind of the Congress, and the provisions of the Sherman Act have been denied application by this Court in many recent cases involving peaceful boycott and peaceful picketing as in the case at bar. (*Apex Hosiery Co. v. Leader*, 310 U. S. 469; *United States v. Hutcheson*, 312 U. S. 219.)

The law with relation to controversies such as the one at bar and the one giving rise to the Allen Bradley decision is not yet entirely clear, although it is clearing, and this Court has held that the interpretation of the Sherman Act is being worked out from case to case. (*United States v. Hutcheson*, supra, at page 230; *Apex Hosiery Co. v. Leader*, supra, at 489.)

B. THIS PETITION SHOULD BE GRANTED IN ORDER THAT THIS COURT MAY RE-EXAMINE AND REAFFIRM OR OTHERWISE DISPOSE OF THE RULE IN THE CORONADO CASES WITH REGARD TO THE LIABILITY OF UNINCORPORATED LABOR ORGANIZATIONS UNDER THE SHERMAN ACT.

In the first and second *Coronado Coal Company* cases, 259 U. S. 393 and 268 U. S. 300, this Court refused to hold the United Mine Workers guilty in a civil suit for conspiracy to violate the Sherman Act, although the activity of the president of the Association, in fact, the actionable participation by the president in the carrying out of the conspiracy was at least

as clearly shown, as any acts of supposed agents of this petitioner in the case at bar, and yet this Court held that while the president might be liable personally, his activity could not bind the Association of which he was a member and president, without the clear proof of authorization or of ratification of the wrongful acts. (See second *Coronado* case, 268 U. S., at page 304.)

C. THE WRIT OF CERTIORARI PRAYED FOR IS NECESSARY IN ORDER THAT THIS COURT MAY REAFFIRM THE RULE AS TO THE RIGHTS OF LABOR UNIONS UNDER THE CLAYTON AND NORRIS-LA GUARDIA ACTS.

This Court in the *Hutcheson* case, supra, recognized what had been made evident "both by powerful judicial dissents and informed lay opinion" (312 U. S. 219 at 231), that the immunization or withdrawal of certain peaceful labor union conduct from the general interdict of the Sherman law contained in the language of the Clayton Act was not recognized by the Courts between the passage of the Clayton Act and the passage of the Norris-La Guardia Act and that it is only since the passage of the Norris-La Guardia Act that the lawfulness of these labor union activities specified in the Clayton Act and again referred to in the Norris-La Guardia Act have been recognized to be without the scope of the Sherman Act. The *Duplex* case, 254 U. S. 443, the *Brims* case, 272 U. S. 549, and the *Bedford Cutstone* case, 274 U. S. 37, must all be read now with this realization in mind. The *Apex* and *Hutche-*

son cases, supra, showed clearly that normal peaceful activities of a labor union in its own interest for the protection of its wage scale and working conditions are precisely the acts referred to and withdrawn from the general interdict of the Sherman law, originally, by the Clayton Act, and, because of the erroneous view of the Courts, made clear and definite by the language of the Norris-La Guardia Act.

The constitutional protection of these labor union activities will be referred to shortly, but for the moment it is our intention to reiterate what this Court has so often said in recent years, namely, that these union activities are by statutory definition and mandate excluded from the prohibitions of the Sherman Act.

Now when we read the opinion of the Circuit Court of Appeals, of which we seek review by this petition for certiorari, we find that the attitude of that Court is that the Sherman Act in some way puts a limitation on the terms of the Clayton and Norris-La Guardia Acts. The reasoning of the Circuit Court of the Ninth Circuit and of the learned District Judge who tried the case, was that no act of a labor union, no matter how clearly immunized by the Clayton Act or the Norris-La Guardia Act, was lawful if it actually caused or contributed to a restraint of interstate commerce. That seemed to be the touch-stone used by both Courts to determine whether union conduct was or was not under the ban of the Sherman Act, namely, did it contribute to a restraint of interstate commerce?

Such, however, was not the intent of the Congress in passing the Clayton Act and the Norris-La Guardia Act, and such was not the understanding of this Court in the *Apex* and *Hutcheson* cases and in more recent pronouncements. The Congress understood and this Court understands that the intent of those statutes is to protect labor unions in peaceful activities in their own interest.

In the opening paragraphs of the opinion here sought to be reviewed (R. 1676), the Circuit Court recited from the indictment as follows:

> "It was further alleged that in 1936 the union group demanded an increase in wages. This demand was acceded to by the manufacturer group"

and then on the next page (R. 1677), it appears that the contract by which the manufacturer group "acceded to" the demand for the increase in wages contained this language, the use of which constitutes the crime for which these defendants were convicted:

> "* * * no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or other distributors that do not conform to the rates of wage and working conditions of this agreement."

The Circuit Court then concludes that this language in a contract allowing increase in wages to the union defendants actually contributed to a diminution of interstate commerce, according to the language of the indictment, and the Circuit Court holds that these

defendants were properly found guilty of the crime of conspiring to restrain interstate commerce. There is not a single overt act alleged in the indictment or actually proven by the evidence which is not found within the protective clauses of the Clayton Act, and the Norris-La Guardia Act, but because these acts were done *after* an agreement with the employers had been consummated, rather than *before* such agreement and pursuant to demands for the execution of such an agreement, these immunized acts become criminal, according to the reasoning of the Circuit Court of Appeals.

In other words, the theory of the decision is that it was entirely proper for the labor organizations to *demand* an agreement under which they should not be required to work on any material or article produced under lower wage and working conditions, and that pursuant to such demand, they might boycott all such unfair material, but the moment they were *successful* in obtaining a contract with the employer for improved wages and working conditions, with a stipulation releasing them from the obligation to work on materials or articles produced under lower scales, then they immediately become criminals under the terms of the Sherman Act. Incidentally, according to this theory, the employers also become criminals. We have the strange situation of innocent acts on the part of the union, namely, making demands upon their employers, and the presumably equally innocent act of their employers in refusing to accede to the demands, but the moment the employers agree to these innocent

demands, both employers and workers become criminals under the Sherman Act. One would expect to find some wrongful act interjected into the situation at some point to make these workers criminals the moment they were successful in obtaining better wages, but no wrongful or immoral act is found anywhere in the situation. The thing that turns the law-abiding workers (and employers also) into criminals is the mere fact of agreeing upon demands and stipulations hitherto recognized as entirely lawful.

The reasoning of the Circuit Court of Appeals on this point is found on page 1677 of the record. At the top of the page the reference is to "this agreement" and "a written contract" between the parties, but two paragraphs further on, we find that this same meeting of the minds has become a "combination" to restrain interstate commerce.

Now, in view of the undoubtedly drastic language of the Sherman Act, condemning "any" restraint of interstate commerce, if the Clayton Act and Norris-La Guardia Act had been passed without any reference to the Sherman Act, it might be conceivable that Congress had passed the latter legislation without having the Sherman Act in mind, so that it would be possible to say that the language of the Clayton Act and of the Norris-La Guardia Act, immunizing demands by workers for better wages and conditions, and peaceful economic pressure pursuant to such demands, were not meant to include any such demands or economic action resulting in a restraint of interstate commerce. But we find that the Clayton and

Norris-La Guardia Acts were passed for the direct purpose of amending the Sherman Act and immunizing these peaceful activities from the penalties of the Sherman Act, which, of course, means that it was recognized by Congress that such peaceful labor union activities might cause a restraint of trade.

The Circuit Court of Appeals seems to argue seriously that a boycott by labor of materials deemed by them to be unfair is lawful only so long as they are in a dispute with their employers, but becomes illegal and criminal the moment of the consummation of an agreement between themselves and their employers.

But this theory is answered by the Supreme Court in unmistakable language in the *Apex Hosiery* case at 310 U. S., page 503, where the Court, after pointing out that:

> "Strikes or agreements not to work, entered into by laborers to compel employers to yield to their demands, may restrict to some extent the power of employers who are parties to the dispute to compete in the market with those not subject to such demands"

but that this union activity would not be in violation of the Sherman Act, the Court goes on to say:

> "Furthermore, *successful union activity*, as for example *consummation of a wage agreement with employers*, may have some influence on price competition by eliminating that part of such competition which is based on differences in labor standards."

D. SUBSTANTIALLY THE SAME ACTS IMMUNIZED BY THE CLAYTON AND NORRIS-LA GUARDIA ACTS ARE ALSO PROTECTED BY THE BILL OF RIGHTS AND IN PARTICULAR BY THE FIRST AMENDMENT TO THE FEDERAL CONSTITUTION.

In the *Hutcheson* case this Court held that labor activity by way of boycott and picketing is not in violation of the Sherman Act, even though it actually causes a restraint of trade, on the ground that such acts are protected by the Clayton Act and the Norris-La Guardia Act. Mr. Justice (now Chief Justice) Stone, at page 243 of 312 U. S., said:

> "the publication, unaccompanied by violence, or a notice that the employer is unfair to organized labor and requesting the public not to patronize him is an exercise of the right to free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress. See Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093."

The language of the Chief Justice brings together the two lines of decision of this Court, the one protecting peaceful boycott and peaceful picketing from the penalties of the Sherman Act and the other line holding that such activities in a dispute "deemed by them to be relevant to their interests" are protected by the provisions of the Bill of Rights. (*American Federation of Labor v. Swing*, 312 U. S. 321 at 326.)

In the case of *Thornhill v. Alabama*, supra, this Court invalidated a statute of the State of Alabama which sought to make it unlawful to "go near to or loiter about the premises" of a person or concern under boycott by the union, to prevent other persons

from dealing with that person, or for "hindering, delaying, or interfering with, or injuring the lawful business or enterprise of such person"; pages 661 and 667.

Now if we look at the provisions of the Clayton Act cited by this Court in the *Hutcheson* case, we find that no injunction can issue to prevent the workers in a labor dispute

> "from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or abstain from working; or from ceasing to patronize or employ any party to such dispute, or from recommending, advising, or persuading others by peaceful or lawful means so to do."

It will be noted that the acts immunized by Section 20 of the Clayton Act are the same acts which are protected under the Bill of Rights by the decision in the *Thornhill* case, supra.

A writ of certiorari in this case should issue in order that the Court may definitely integrate these two lines of decision, the *Apex Hosiery Co. v. Leader*, *United States v. Hutcheson*, *United States v. American Federation of Musicians*, all supra, and *United States v. Carrozzo*, 37 Fed. Supp. 191, affirmed 61 S. Ct. 839, and other cases, holding peaceful boycott and peaceful picketing to be free from the pains and penalties of the Sherman Act because of the protection afforded by the Clayton and Norris-La Guardia Acts

and the other line of decision, *Senn v. Tile Layers, Thornhill v. Alabama, Carlson v. California, A. F. of L. v. Swing, Bakery Drivers v. Wohl,* all supra, and *Cafeteria Employees Union v. Angelos,* 64 S. Ct. Reporter 126, and other cases upholding these same activities in cases not involving interstate commerce, as being the exercise of constitutional rights. Mr. Chief Justice Stone in his concurring opinion in the *Hutcheson* case, cited supra, has pointed out the way, and this opinion should be definitely and clearly reaffirmed by this Court.

Petitioner respectfully submits that a writ of certiorari should issue.

Dated, San Francisco, California,
November 8, 1944.

Respectfully submitted,
GUY C. CALDEN,
Counsel for Petitioner.

CLARENCE E. TODD,
Of Counsel.